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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Delivered on May 23, 2007

\+ CRL.M.C. 957/2005

UMESH TANDON & ORS. ..... Petitioners
Through Mr. Ajay Burman, Mr. Anil K. Thakur, Advocates

versus

INDIAN TECHNOLGOCIAL PRODUCTS ..... Respondent
Through Mr. Soumyajit Pani, Advocate

**CORAM:**
**Mr. Justice S. Ravindra Bhat**

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

**<u>Mr. Justice S. Ravindra Bhat</u> (Open Court)**

1. This petition is for quashing of criminal proceedings i.e. complaint filed by the respondent for alleged commission of offences under Sections 138/141 Negotiable Instruments Act (hereafter referred to as "the Act").

2. The complainant had alleged that the petitioner accused issued a cheque for Rs. 25482/- on 14.6.2000. It was dishonoured upon presentation in the normal course of business. It was again presented on 28.6.2000 but not honoured. On the third occasion, it was presented on 5.9.2000 and dishonoured on 7.9.2000. The dishonour memo was

issued on 14.9.2000 and the complainant issued a legal notice in terms of Section 138 on 21.9.2000. It is also undisputed fact that on 16.11.2000, after issuance of the notice and non-compliance with its terms, the complainant presented the cheque a fourth time allegedly on request of the accused petitioner. This time too the cheque was returned and a second notice was issued before the complaint was filed.

3. After process was issued by the trial court, the petitioner filed an application enclosing the copy of the previous notice issued on 21.9.2000. That was admitted by the complainant. The present petition is premised on the ground that after having issued legal notice issued on 21.9.2000, the complaint ought to have been filed within the stipulated period, namely, 30 days from the date of receipt. It is contended that the notice was received on 23.9.2000. It is contended that the cause of action was lost and that the fourth presentation of the cheque and the subsequent notice did not permit the filing of the complaint.

4. Learned counsel has placed reliance upon the judgments of the Supreme Court reported as *Sadanandan Bhadran vs. Madhavan Sunil Kumar*, (1998) 6 SCC 514 as explained in *Dalmia Cement (Bharat) Ltd. vs. Galazy Traders & Agencies Ltd. and Ors.* and the latest judgment of the Court in *Prem Chand Vijay Kumar vs. Yaspal Singh,* (2005) 4 SCC 417. It was contended that once notice under Section 138(b) is received by the drawer of the cheque, the complaint has to be preferred within the stipulated period, or else the payee forfeits the right to present the cheque again and the cause of action in such case is lost even though the right to sue and recover the amount through other processes may be reserved, if available in accordance with law.

5. Learned counsel for the respondent complainant opposed the petition and submitted that the judgment in *Dalmia Cement (Bharat) Ltd.*(supra) is more apt to the circumstances of this case. He placed reliance on para 10 of the judgment to say that the Court should desist from quashing the criminal proceedings after notice has been issued to the petitioner accused. The more appropriate course would be for the parties to contest the merits of the case. It was contended that a fresh right had in fact accrued after the presentation of the cheque on 16.11.2000 and its dishonour which led to issuance of a second legal notice.

6. The line of reasoning indicated in *Sadanandan Bhadran's* case and reiterated/re-cited in *Prem Chand Vijay Kumar's* case admits no room for further debate. The Supreme Court has ruled that the cause of action for the purpose of initiating a complaint under the Act accrues but once, i. e. the dishonour of the cheque, issuance of the legal notice which will lead to the filing of the complaint. The ratio of these decisions does not admit of a second cause of action whereby the payee is permitted to repeatedly present cheque (after issuance of a notice) and yet claim the right to approach and seek remedy under the Act. The position, post 2006 amendment might be different. However, that is not an issue which the Court has to engage itself in these proceedings since admittedly the cheque in question was issued in the year 2000. The proper course in this case should have been that after issuance of the notice on 21.9.2000, the complainant could have approached the court within the stipulated period; he instead presented the cheque yet again on 16.11.2000, issued a notice thereafter and then filed the complaint much later on 18th December, 2000. This was clearly way beyond the period of limitation and the

Court could not have taken cognizance under Section 142.

7. In view of the above findings, the petition is entitled to succeed. Accordingly, the criminal proceedings arising out of the Complaint Case No. 4203/1/2003 pending in the court of M/s. Anuradha Shukla, MM, Patiala House, New Delhi and all further proceedings are hereby quashed. Nothing stated here shall be construed as an expression on the right of the complainant to initiate such proceedings, as may be available in accordance with law.

**S.RAVINDRA BHAT, J**

**MAY 23, 2007**
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